

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

CODY FLACK, et al.,
Individually and on behalf of all others similarly situated,

Plaintiffs,

ORDER

v.

18-cv-309-wmc

WISCONSIN DEPARTMENT OF HEALTH
SERVICES, et al.,

Defendants.

ORDER

IT IS ORDERED that:

1. For the reasons stated in the court's August 16, 2019, Opinion and Order (dkt. #217), Wis. Admin. Code §§ DHS 107.03(23)–(24), 107.10(4)(p) ("the Challenged Exclusion"), is hereby declared null and void under: Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116; the Medicaid Act's availability requirement, 42 U.S.C. § 1396a(a)(10)(A); the Medicaid Act's comparability requirement, 42 U.S.C. § 1396a(a)(10)(B); and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution.
2. Defendants are also permanently enjoined from enforcing the Challenged Exclusion.
3. Within 180 days of this order, defendants shall publish a coverage policy regarding services previously excluded under the Challenged Exclusion.
4. Within 90 days of this order, defendants shall:
 - a. issue a *ForwardHealth Update* that includes a notice of this order permanently enjoining enforcement of the Challenged Exclusion and explains that current Wisconsin Medicaid beneficiaries may be eligible for services that were previously excluded from coverage under the Challenged Exclusion, and previously may have been denied;
 - b. provide notice to the social service providers on Appendix A of plaintiffs' amended proposed order (Pls.' Am. Proposed Order, App. A (dkt. #237-1) 12) that this court has permanently enjoined enforcement of the

Challenged Exclusion and providing that current Wisconsin Medicaid beneficiaries may be eligible for coverage for services that were previously excluded from coverage under the Challenged Exclusion, and previously may have been denied;

- c. provide notice to all Wisconsin Medicaid Health Maintenance Organizations (“the HMOs”) that this court has permanently enjoined enforcement of the Challenged Exclusion and that individual authorization requests for services previously excluded from coverage under the Challenged Exclusion are subject to the Wisconsin Department of Health Services’ standard review, prior authorization procedures, and determinations for medical necessity, and encourage the HMOs to consider notifying individuals previously denied coverage for services because of the Challenged Exclusion that they may be eligible to request coverage for a service or services previously found to be excluded from coverage; and
 - d. consider notifying fee-for-service beneficiaries previously denied coverage because of the Challenged Exclusion that they may be eligible to request coverage for a service or services previously found to be excluded from coverage.
5. The parties’ joint stipulation of partial dismissal (dkt. #247) is accepted.

Dated this 31st day of October, 2019.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge